IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11.06.2007

CORAM

THE HONOURABLE MR.JUSTICE DHARMA RAO ELIPE
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT PETITION No.4194 of 2004
& WPMP No.4933 of 2004 & WVMP No.1809 of 2004

Kadichambadi village President
rep.by its President
A.Govindasamy
s/o.Arumugarm
Manal mettu street
Kadichambadi post
Kumbokonam tk.,
Tanjore district ... Petitioner

-vs-

1. Kumbakonam Municpality
   rep.by its Commissioner
   Kumbakonam

2. The Collector
   Tanjore district
   Tanjore

3. The Tahsildar
   Kumbakonam

... Respondents

The writ petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, forbearing the respondents from dumping, storing and processing garbage waste and other waste materials in the vacant lands comprised in s.No.64/1, 2,5,6, S.No.65/1, 4, 3, 7, 12, 13, 14, 15, 19, S.No.68/2, 68/3A and 68/3B ofKadichambadi village, Kumbakonam taluk, Tanjore district more particularly described in the writ petition schedule.

For petitioner : Mr.Pitty Parthasarathy
For respondents : Mr.V.Subbarrayan
and Mr.K.Rajkumar for R1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was made by DHARMA RAO ELIPE,J.)

The writ petition is filed for the issuance of a writ of Mandamus, forbearing the respondents from dumping, storing and processing garbage waste and other waste materials in the vacant lands comprised in S.No.64/1, 2,5,6, S.No.65/1, 4, 3, 7, 12, 13, 14, 15, 19, S.No.68/2, 68/3A and 68/3B of Kadichambadi village, Kumbakonam taluk, Tanjore district.

2. The brief facts leading to the filing of the writ petition are as follows:

The petitioner is the President of the village Panchayat of Kadichambadi village. The first respondent Kumbakonam Municipality announced a proposal to purchase lands at Kadichampadi village under the guise of putting up a fertilizer godown in the village. Some of the residents expressed their willingness to sell their properties to the Municipality. But, subsequently, the villagers came to know that the lands are required only to dump garbage waste and other waste collected at Kumbakonam and therefore, the offer made by the villagers were withdrawn. The villagers made several representations to drop the scheme. Since, their request was not considered, the present petition was filed as 'PIL'.

3. A counter is filed by the first respondent refuting the allegations made by the petitioner. The lands mentioned in the writ petition are not cultivated for the past 10 years and cannot be utilised for agricultural purposes. Hence, the above lands can be utilised only for the purpose of either dumping garbage or storing water. Therefore, the owners of the lands sold the same to the Municipality for good price. As regards the allegation raised by the petitioner that the land owners are forced to sell the lands is concerned, it is submitted that if the allegation is found to be true, the land owners could have given a complaint to the police. But, no such complaint was filed. Even the Tamil nadu Pollution Control Board has certified for the location of the above compost yard and there is no possibility of pollution. As such, there is no possibility of or apprehending danger of any unknown disease and there is no threat to the right of individual right or property right. The petitioner is having the right to safeguard the villagers. But, he is not entitled to stall the proceedings of the other elected body like the petitioner. Hon'ble Supreme Court set up committee to formulate solid waste Management guidelines and the Committee has given mandatory recommendations for improving the sanitation in all Urban and Rural areas. Therefore, the first respondent Municipality is under compulsion to set up the compost Yard immediately and work out the modalities for collection of Garbage. Hence, dismissal of the writ petition is prayed for.

4. We have heard the learned counsel for the parties and also gone through the materials available on record.

5. This is a dispute between the Kadichambai Village and the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Kumbakonam Municipality regarding the dumping, storing and processing garbage waste and other waste materials.

6. Section 238 of the Tamil Nadu Panchayats Act, 1994 deals with Adjudication of disputes between local authorities which reads as follows:

> (1) When a dispute exists between a village panchayat or a panchayat union council or a district panchayat and one or more other local authorities in regard to any matter arising under the provisions of this or any other Act and the Government are of opinion that the village panchayat or the panchayat union council or the district panchayat and the other local authorities concerned are unable to settle it amicably among themselves, the Government may take cognizance of the dispute, and a) decide it themselves, or
>
> b) refer it for inquiry and report, to an arbitrator or a board of arbitrator or to a joint committee constituted for the purpose.
>
> 2) The report referred to in Clause (b) of sub section(1) shall be submitted to the Government who shall decide the dispute in such manner as they deem fit.
>
> 3) Any decision given under Clause (a) of sub-section (1) or under sub-section (2) may be modified from time to time by the Government in such manner as they deem fit, and any such decision with the modifications, if any, made therein under this sub-section may be cancelled at any time by the Government.

7. Therefore, as seen from the above provision of law, it is clear that when there is a dispute between a village panchayat or a panchayat union council or a district panchayat and one or more other local authorities like the petitioner and the first respondent herein, power vests with the Government to either settle the dispute among themselves or appoint an arbitrator or board of arbitrators for conducting enquiry for the purpose. After receiving the report, the Government can decide the dispute in such a manner as they deem fit.

8. According to the petitioner, the proposed dumping of the garbage in the area would cause environmental hazards, besides causing health problems to the villagers. But, without invoking the said Section, the petitioner has straight away approached this Court and obtained interim order, by virtue of which the proposal of the first respondent has been stopped. No reasons have been mentioned by the petitioner as to why he has not invoked the provision of Section 238 of the Tamil Nadu Panchayat Act, whereunder the Legislature, in its wisdom, has provided the manner in which such disputes between local authorities shall be adjudicated.

9. In the case on hand, when the first respondent Municipality and other local bodies tried to acquire the lands for dumping garbage or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

storing water, the writ petitioner, who is the elected President of the village, tried to stall the project or the action of the respondents in acquiring the lands for the above project, through this writ petition. Though the third respondent in his proceedings dated 11.12.2003 called for peace talks with the prominent persons in the village and the petitioner to settle the issue peacefully, the petitioner did not participate in the meeting conducted on 11.12.2003 and 10.01.2004. But, the petitioner resorted to approach this court without resorting to Section 238 of the Panchayats Act and filed this writ petition as probono publico and obtained an interim order as a result of which, the above project of the first respondent was stalled from 2003. Furthermore, there is no material on record that the petitioner has been empowered to file this writ petition by the Village Panchayat. When general elections were conducted in May 2006, the petitioner has not contested in the election and therefore he is not the Village President now. Therefore, this writ petition cannot be entertained, as he has not taken necessary steps, after his term of office is over to continue to prosecute the case either in his individual capacity or as a person interested in the matter to prosecute the case. Therefore we see no merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected WPMP and WVMP are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ajr/Rao
To

1. The Commissioner,
   Kumbakonam Municpality
   Kumbakonam

2. The Collector
   Tanjore district
   Tanjore

3. The Tahsildar
   Kumbakonam

WEB COPY

1 cc to M/s K.Rajkumar Advocate SR.NO.33486
1 cc to M/s G.Ethirajulu Advocate SR.NO.33490

AVM(co)
RD 3.7.07 W.P.No.4194 of 2004

https://hcservices.ecourts.gov.in/hcservices/

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/